

Amending Pleadings To Add Strikes

JUDGE J. RICHARD COUZENS
SUPERIOR COURT OF PLACER COUNTY

The three-strikes law directs the prosecution to "plead and prove each prior felony conviction" suffered by the defendant. (Pen. Code, § 1170.12(d)(1).) In other words, the district attorney is to launch a "search-and-destroy mission" into the defendant's background to determine whether there are any chargeable strikes. Although in many instances the record of the defendant is readily obtainable, there are times when an accurate "rap sheet" is not available at the time charges are initially filed. If the defendant has refused to waive time or pleads out early (perhaps hoping to move the case through the courts before the prosecution discovers the full extent of the defendant's indiscretions), prosecutors often must add strike allegations at later stages of the criminal process.

The procedures for amending criminal pleadings to add prior convictions have been delineated by statute and numerous appellate opinions, including a recent decision by the California Supreme Court. The rules vary depending on when the amendment is requested in the criminal process.

PRIOR TO ENTRY OF PLEA OR RULING ON DEMURRER

Penal Code section 1009 gives the prosecution the absolute right to amend an accusatory pleading for any reason, without leave of court, at any time prior to the defendant's entry of a plea or the court's sustaining a demurrer to the original pleading.

AFTER INITIAL PLEA BUT PRIOR TO CONVICTION

Section 1009 allows the court to permit the filing of an amended pleading to cure "any defect or insufficiency, at any stage of the proceeding." Furthermore, sec-

tion 969a permits the prosecution to amend the information whenever it is discovered that a prior felony conviction has not been charged. These statutes have been applied liberally to permit amendment up to the point of a defendant's conviction. The process for postconviction amendments is governed by the way in which the conviction was obtained.

AFTER CONVICTION BY PLEA

Penal Code section 969.5 allows the prosecution to amend the accusatory pleading up to the defendant's sentencing to add a prior strike after conviction by plea of guilty or nolo contendere. (*People v. Tindall* (2000) 24 Cal.4th 767.) The allowance of the amendment is within the broad discretion of the trial court. (*People v. Sipe* (1995) 36 Cal.App.4th 468, 489-490; *People v. Superior Court (Alvarado)* (1989) 207 Cal.App.3d 464, 472-478.) If the prosecution is permitted to amend a pleading to charge a prior conviction, the defendant must be allowed to withdraw the previously entered plea if it is apparent that he or she will not have been properly advised of the consequences of the plea to the pleading as amended. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022-1024.)

AFTER CONVICTION BY COURT TRIAL

Section 969a permits the prosecution to amend the accusatory pleading to add a prior conviction until sentencing, provided the defendant has waived the right to a jury trial on the question of guilt and/or on any alleged prior conviction. (*Tindall, supra*; *People v. Valladolid* (1996) 13 Cal.4th 590.)

Litigation Program. One of the judges assigned to that panel has created, with the assistance of a private Web design company, a Web page to help manage a particularly complex case. Things like service of process, court orders, and notices of ruling are all posted on the Web page, eliminating the necessity of serving multiple copies of pleadings on all the parties. The Web page is another example of carrying out the Judicial Council's mission of reducing the cost of civil litigation.

CJER's charge will be to help the judiciary meet the challenges of these and other technological innovations that seem to confront courts on a daily basis. CJER is already working on several new ventures that will take advantage of new technologies. ■

AFTER CONVICTION BY JURY TRIAL

If the jury has not been discharged, the court has discretion to permit the amendment of the accusatory pleading to add a prior conviction after a jury has convicted the defendant of the current charges. (*Tindall, supra*; *Valladoli, supra*; *People v. Saunders* (1993) 5 Cal.4th 580.) *Valladoli* listed five factors for the court to consider in ruling on the prosecution's request at this stage of the proceedings: "(i) the reason for the late amendment, (ii) whether the defendant is surprised by the belated attempt to amend, (iii) whether the prosecution's initial failure to allege the prior convictions affected the defendant's decisions during plea bargaining, if any, (iv) whether other prior felony convictions had been charged originally, and (v) whether the jury has already been discharged (see § 1025)." (*Valladoli, supra*, 13 Cal.4th at pp. 607-608.) The prosecution need not show due diligence prior to the court's granting the amendment. (*Tindall, supra*.)

Tindall also addressed the circumstance in which the prosecution seeks to add a prior conviction after the jury has been discharged. Citing the provisions of section 1025(b) that give the defendant the statutory right to have the fact of any prior conviction determined by the same jury that decided the issue of guilt,

the California Supreme Court held that amendment of the pleadings under such a circumstance is not permissible. Section 1025(b), however, does not apply in situations where the defendant has waived his or her right to a jury at the guilt phase and/or on the prior convictions, or when the defendant has forfeited the right to a jury by failing to object to its discharge before a determination of any prior conviction.

AFTER SENTENCING

The court loses its jurisdiction to vacate a plea and add additional strikes once a defendant has been sentenced to state prison and remanded to the Department



Judge J. Richard Couzens

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

THREE STRIKES NETWORK



of Corrections to commence the term. (*Cano v. Superior Court (People)* (1999) 72 Cal.App.4th 1310.) The only exception to this rule is the situation addressed by section 1170(d), which permits the recall of a state prison sentence within 120 days. Such a recall, however, generally does not permit the court to impose a sentence greater than that originally ordered. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) ■

Prop. 36 Update

Proposition 36 is the initiative approved by voters last November that generally prescribes treatment rather than incarceration for nonviolent drug offenders. The Judicial Council and the Administrative Office of the Courts (AOC) are endeavoring to help the trial courts implement this initiative in anticipation of its effective date, July 1, 2001.

Implementation Workgroup

The Proposition 36 Implementation Workgroup was created by the Judicial Council to share information and exchange ideas on the implementation of Proposition 36. The workgroup, whose success depends largely on its collaborative nature, met for the second time on January 31 in San Diego.

Workgroup member Howard Weinberg provided an update from the Department of Alcohol and Drug Programs (DADP) on funding for Proposition 36. He reported that DADP will allocate \$60 million to the counties for start-up costs in 2000-2001 and \$120 million in 2001-2002. In order to receive funds, each county must submit to DADP a resolution from its board of supervisors that includes:

1. Designation of a county lead agency;
2. Agreement to comply with the provisions of the act; and
3. Assurance of the establishment of a local trust fund for money received pursuant to the act.

In addition to allocating funds, DADP established an advisory committee on Proposition 36. Superior Court of Santa Clara County Judge Stephen V. Manley

and Superior Court of Los Angeles County Judge Ana Maria Luna were appointed to represent the Judicial Council on the committee.

The Proposition 36 Implementation Workgroup is developing flowcharts, models, and recommendations to guide California's trial courts on how best to implement the measure. The models will take into consideration the varying degrees of drug offenses and drug involvement of those who are potentially eligible for treatment under the proposition. The workgroup is also gathering case-load data from county courts that should help determine the overall impact of Proposition 36.

● For more information, contact Nancy Taylor, 415-865-7614, e-mail: nancy.taylor@jud.ca.gov.

Online Assistance for Judges

The AOC's Education Division has nearly completed an online course for trial court judges that will address changes in the law as a result of Proposition 36 and should be available on Serranus this spring. At an electronic forum associated with the course, interested parties will be able to ask questions of faculty.

Judges will use the Proposition 36 course to educate themselves about specific applications of the law to defendants who may appear before them. The course not only will explain aspects of the law but will raise cautions where existing law or the proposition's language is unclear.

● For more information, contact Bob Schindewolf, Education Division, 415-865-7798, e-mail: bob.schindewolf@jud.ca.gov.

Q&A

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nology that is available. For example, the broadband technology that exists today is in its infancy. I foresee a day when court appearances for certain types of proceedings will be held by videoconference with parties in their own offices or chambers. Our videoconferencing capability is less than perfect, as the transmission lacks clarity of picture and sound. As this technology develops, CJER's challenge will be to keep court personnel abreast of these advances.

One example of how far we have come in utilizing technology comes from the Superior Court of Los Angeles County's Complex



Kay Farley

107th Congress Convenes

KAY FARLEY
GOVERNMENT RELATIONS
REPRESENTATIVE
NATIONAL CENTER FOR
STATE COURTS



The 107th Congress faces a host of issues that are of concern to state courts—some old and some new. Shifts in committee chairs and member assignments will influence these issues as congressional leaders finalize committees and work out the details of their operating procedures.

Quite a number of changes have occurred in the chairs of House committees because of the term limits imposed by the operating rules of the Republi-

can majority. The following new chair appointments are of particular note for court-related legislation.

□ F. James Sensenbrenner, Jr. (R-Wis.)—Judiciary Committee

□ Frank R. Wolf (R-Va.)—Commerce, Justice, State and Judiciary Subcommittee of the Appropriations Committee

□ William M. Thomas (R-Calif.)—Ways and Means Committee

□ Wally Herger (R-Calif.)—Human Resources Subcommittee of the Ways and Means Committee

Many of the bills that affect state courts are assigned to these committees. Obviously, the Judiciary Committee plays a key role in court-related legislation. The Commerce, Justice, State and Judiciary Subcommittee of the Appropriations Committee is responsible for the Department of Justice grant programs. The Ways and Means Committee is the counterpart of the Senate Finance Committee, and its Human Resources Subcommittee has responsibility for child welfare, child support enforcement, and public assistance legislation.

Following is a partial list of the issues these committees will address in the 107th Congress that may affect state court operations.

APPROPRIATIONS

The Commerce, Justice, State and Judiciary appropriations bill includes many of the federal programs with impacts on courts, e.g., Byrne grants; National Criminal History Improvement Program grants; and funding for juvenile justice, domestic violence prevention, and drug courts. In addition, Congress will need to approve the annual appropriations for the Legal Services Corporation and the State Justice Institute.

CHILD CUSTODY, ACCESS AND VISITATION PROGRAMS

Funding to assist courts in developing and implementing access

and visitation programs has been available through the Child Support Enforcement Program. Approval of the annual appropriations for this program will be needed for the program to continue.

CHILD SUPPORT ENFORCEMENT

Two pieces of legislation were considered by the 106th Congress and are likely to be reintroduced. Legislation to establish fatherhood programs most certainly will be reintroduced. It is also likely that legislation to allow public child support agencies access to certain federal databases and enforcement tools will resurface in this congressional session.

CHILD WELFARE

The 106th Congress authorized the Strengthening Abuse and Neglect Court Act to assist courts in implementing the Adoption and Safe Families Act of 1997 (Pub. L. 105-89). Funding, however, was not appropriated and will be needed for fiscal year 2002. Additionally, the Court Improvement Project (CIP) program and the Child Abuse Prevention and Treatment Act (CAPTA) must be reauthorized this year, since their authorizations expire in 2001. The CIP program provides formula funding directly to state courts to improve the handling of abuse and neglect cases, and CAPTA is a source of funding for family preservation and child abuse prevention services.

FEDERALISM

Every year there is a significant number of legislative proposals to transfer jurisdiction over certain legal actions from the state to the federal courts or in some other way pre-empt state authority. Legislation related to the handling of asbestos cases, class action suits, takings cases, mass tort cases, and product liability cases is likely to return. The Victims' Rights Constitutional Amendment, legislative proposals to exempt federal attorneys from state attorney ethics rules, and legislative proposals related to DNA testing and competent counsel in capital cases will likely resurface.

HATE CRIMES

Legislation to address hate crimes most certainly will be reintroduced.

JUVENILE JUSTICE

The 106th Congress was unable to reach agreement on changes to the Juvenile Justice Act. Indications are that this issue will be reintroduced.

PRIVACY AND PUBLIC ACCESS

The 106th Congress was unable to reach agreement on an approach to addressing the issue of privacy and the public's access to records. Particularly problematic is the public's access to social security numbers. A significant number of legislative proposals are anticipated.

PROBLEM-SOLVING COURTS

Congress appears to have a growing interest in the problem-solving courts. For some years, federal funding has been available for the planning and implementation of drug courts. The 106th Congress enacted legislation to authorize a grant program for establishing mental health courts. Although the program was authorized, funding was not appropriated and will be needed for fiscal year 2002. Congress also has expressed interest in re-entry courts as a means of providing supervision of offenders released from prison.

TECHNOLOGY/INTEGRATED INFORMATION SYSTEMS

Through the Crime Identification Technology Act (CITA), Congress has provided funds for integrated justice information system development. Congress has become increasingly aware of the need for information sharing among criminal justice agencies and the courts.

The National Center for State Courts' Office of Government Relations will monitor congressional activity and work with state court leaders to respond to legislative proposals that have implications for state courts.

● For more information, contact the National Center for State Courts, 757-253-2000, or visit its Web site at www.ncsc.dni.us. ■

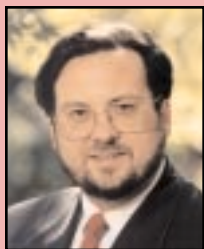
AOC Welcomes Scholar-in-Residence

The Administrative Office of the Courts (AOC) announced in February that McGeorge School of Law Professor Clark Kelso will be the agency's 2001 scholar-in-residence. He succeeds Larry Sipes, former president of the National Center of State Courts, who served as the AOC's first scholar-in-residence in 2000.

The Scholar-in-Residence Program was established last year to invite recognized experts in the justice system to work with the AOC to improve the administration of the courts. In his new part-time post, Professor Kelso will assist the AOC in developing a new Center for Innovative and Effective Court Practices and will continue the work started by Mr. Sipes in developing the AOC Forum, a scholarly lecture series for staff members.

Professor Kelso began his new assignment at the AOC in February. He retains his position as professor of law and director of the Governmental Affairs Program and the Capital Center for Government Law and Policy at McGeorge School of Law, University of the Pacific, in Sacramento. He has served in this position at McGeorge since May 1995.

Governor Davis appointed Professor Kelso chair of the California Earthquake Authority in November 2000 and confirmed his appointment as California's acting insurance commissioner from July to September 2000. In addition, Professor Kelso has held key positions on Judicial Council committees and task forces, including the Appellate Process Task Force (current member), the Blue Ribbon Commission on Jury System Improvement (1996), the Select Coordination Implementation Committee (1995), and the Court Technology Task Force (1994-1995).



Professor Clark Kelso

Nominations Sought for National Awards

NCSC Rehnquist Award

The National Center for State Courts (NCSC) is now accepting nominations for the William H. Rehnquist Award for Judicial Excellence, to be presented in the fall of 2001.

The award is presented to a state court judge who possesses the qualities of judicial excellence exemplified by William H. Rehnquist, Chief Justice of the U.S. Supreme Court. Nominees should have at least 15 years of experience in state courts of appellate, general, limited, or special jurisdiction and should have demonstrated the following qualities: integrity, fairness, open-mindedness, knowledge of the law, adherence to professional ethics, creativity, sound judgment, intellectual courage, and decisiveness. Nominees should also have promoted innovations of national significance in the manage-

ment of state courts and provided leadership, at the national or state level, toward improving systems of justice.

In 1998 Superior Court of Los Angeles County Judge Veronica S. McBeth, then presiding judge of the Los Angeles Municipal Court, was honored with the Rehnquist Award for making a positive difference in her community through innovative and creative education programs that help citizens understand the legal process.

● For more information, visit NCSC's Web site at www.ncsc.dni.us, or contact Shelley Fischer, National Center for State Courts, P.O. Box 8798, Williamsburg, Virginia 23187-8798, 800-877-1233.

NACM Awards

April 13 is the deadline for nominations for the National Association for Court Management's

(NACM) Justice Achievement Award. The award recognizes courts and related organizations for meritorious projects and accomplishments that enhance the administration of justice.

● For more information, visit www.nacmnet.org or contact the National Association for Court Management, c/o National Center for State Courts, P.O. Box 8798, Williamsburg, Virginia 23187-8798, 757-259-1841; e-mail: nacm@ncsc.dni.us.

April 13 is also the deadline for nominations for the NACM Award of Merit. The association's most prestigious individual award is presented annually to a person who has demonstrated leadership and excellence and whose work reflects NACM's purposes of increased proficiency of administration, modern management techniques, and support for the use of technological methods.

● For more information, visit www.nacmnet.org or contact Dottie McDonald, Office of Court Administration, 512-463-1657, e-mail: dottie.mcdonald@courts.state.tx.us.

Education & Development

Family Violence Spotlighted

Annual Conference on Family Violence

The Center for Families, Children & the Courts, in collaboration with the Judicial Council's Family and Juvenile Law Advisory Committee and the California Center for Judicial Education and Research, is sponsoring "Family Violence and the Courts: A Coordinated Response," its annual conference on family violence, May 17-18 in Los Angeles.

The conference brings together representatives of the courts and the community to address family violence and to strengthen family and domestic violence coordinating councils, also known as family violence councils. These are county-based groups consisting of judicial officers, court staff, prosecutors, defense attorneys, domestic violence victim advocates, batterer intervention program staff, health care workers, social services professionals, law enforcement personnel, and others who coordinate their efforts to reduce domestic violence.

The keynote speakers for the conference include California Attorney General Bill Lockyer; Peter Jaffe, Ph.D., Executive Director of the London Family Court Clinic in Ontario, Canada, and Adjunct Professor in the Department of Psychology and Psychiatry at the University of Western Ontario; and Sujata Warriar, Ph.D., Director of the Health Care Bureau of the New York State Office for the Prevention of Domestic Violence.

The conference will also feature workshops and plenary sessions showcasing model programs from around the state, as well as discussions of a variety of family violence issues by experts from the legal, social work, law enforcement, and related fields. Topics will include the impacts of domestic violence on children, cultural competence, probation services, domestic violence courts, new legislation and case law, and responding to families with multiple issues that include substance abuse and domestic violence. Family violence councils will have an opportunity to share their strategies with other counties in focused discussion groups.

Family Violence Councils To Meet

On March 30 the Judicial Council and the San Francisco Family Violence Council will co-sponsor the first San Francisco Bay Area Regional Meeting of domestic violence coordinating councils, or family violence councils, which have been established in most California counties. Members from 11 counties in the region

will meet at the Administrative Office of the Courts to discuss concerns, accomplishments, and strategies for combating domestic violence.

● For more information, contact Tamara Abrams, Center for Families, Children & the Courts, 415-865-7712, e-mail: tamara.abrams@jud.ca.gov; or JoAnn McAllister, 415-551-3714, e-mail: jmcallister@sftc.org.

Family Law Education

The Hilton Hotel in Costa Mesa will have double duty March 21-24, serving as the site of both the Center for Judicial Education and Research's (CJER) 2001 Family Law and Procedure Institute and the Center for Families, Children & the Courts' (CFCC) 15th annual Statewide Educational Institute.

The conferences will present joint seminars on Friday, March 23, focused on meeting the diverse needs of families and children in family court. These seminars will include Court and Community Relations in the Family Law Arena, New Perspectives in Domestic Violence, Case Management, Resiliency, Using Child Development Research to Make Appropriate Custody Decisions, Personal and Workplace Security, and The Relationship of Juvenile and Family Court in Child Abuse Cases.

Friday's keynote luncheon speaker, E. Mavis Hetherington, Ph.D., will address attendees of both conferences. She is known for her pioneering research exploring how divorce affects children and parents. In one of her studies, Dr. Hetherington tracked 450 families for 20 years to observe the impacts of divorce across generations.

CJER's 2001 Family Law and Procedure Institute will play host to more than 125 judges and 30 faculty members. Planned by the newly appointed Family Law Education Committee, the institute was expanded this year to include a series of intensive all-day workshops for family law judges, commissioners, and referees.

Presiding Judge William C. Harrison of the Superior Court of Solano County, President of the California Judges Association, will address conference participants at the luncheon on Thursday. In addition, the conference offers more than 20 workshops addressing issues such as child abduction, complex paternity, high-conflict families, custody and visitation modification, child support, and spousal support.

"Wisdom in Practice: Service to Families, Children, and the Courts" is the theme of CFCC's 15th annual Statewide Educational Institute, sponsored

by the Judicial Council and the Administrative Office of the Courts. The institute is expected to attract 400 attendees representing family court programs throughout the state.

More than 20 workshops and plenary sessions will feature statewide and national experts speaking on such topics as the impacts of divorce on children, resiliency, alienation, guardianship investigation, domestic violence, substance abuse, child custody evaluation, and implementation of new legislation.

● For more information on CJER's 2001 Family Law and Procedure Institute, contact Barbara Fitzgerald, 415-865-7817, e-mail: barbara.fitzgerald@jud.ca.gov. For information on CFCC's 15th annual Statewide Educational Institute, contact Phil Reedy, 415-865-7556, e-mail: phil.reedy@jud.ca.gov.

Conferences to Focus on Pro Pers

Based on statistics from courts around the state, approximately 60 percent of litigants in family law matters are unrepresented in their cases, posing a substantial challenge for the courts. In response, the Judicial Council's Center for Families, Children & the Courts will conduct four regional conferences this spring to help California's courts assist the growing number of unrepresented litigants.

Participants will learn from representatives of programs in the state, as well as from national experts, about existing self-help programs in areas such as family law, landlord-tenant law, and other civil matters. Speakers will also discuss ongoing partnerships of courts and communities through which comprehensive and effective services are being developed for litigants without lawyers.

One of the goals of conference organizers is to have each county court appoint a team that will develop an action plan for serving unrepresented litigants. Teams will consist of court executives, judges, private bar representatives, legal service attorneys, family law facilitators, small claims advisors, law librarians, and other interested court staff and community members.

The conferences will include 15 workshops on topics such as judicial ethics and self-represented litigants, unbundling legal services, using volunteers in self-help programs, evaluating self-help programs, partnering with community and legal services agencies, and providing self-help services to non-English-speaking litigants.

The two-day conferences will take place March 15-16 (Visalia), April 5-6 (San Francisco), April 19-20 (Chico), and April 26-27 (Costa Mesa).

● For more information, contact Bonnie Hough, 415-865-7668, e-mail: bonnie.hough@jud

Court Interpreter Training



The first Judicial Council-sponsored English and Korean Oral Preparation and Assessment Workshop was held in January to prepare potential court interpreters to take the certification exam. Workshop participants posed with instructors (starting with third person from left, front row) Philip Cho, certified Korean interpreter; Holly Mikkelsen, certified Spanish interpreter; Tony Moon, Court Interpreters Advisory Panel member; and Beth Gatchalian-Litwin, Court Interpreter Program staff member.

.ca.gov, or Christine Copeland, 415-865-4225, e-mail: christine.copeland@jud.ca.gov.

CJER BENCHTIPS

Giving ADR Guidance

New rules recently approved by the Judicial Council give judges, court administrators, neutrals, and litigants new duties designed to provide guidance on alternative dispute resolution (ADR) to parties in a lawsuit.

Under the new rules, when a complaint is filed in any trial court after June 30, 2001 (Cal. Rules of Court, rules 1580-1590.3), the court must make available to the plaintiff an ADR information package that describes the advantages and disadvantages of the principal ADR processes. The Administrative Office of the Courts has distributed a pamphlet called "You Don't Have to Sue" that can be used or adapted for this purpose. The package, which must also contain a description of the ADR programs available in that court, must be served on the defendant with the complaint.

The new rules require each trial court to designate an ADR program administrator whose duties include developing this informational material, supervising the development and maintenance of any panels of ADR neutrals maintained by the court, and educating attorneys and litigants about the court's ADR programs.

Although the primary responsibility for providing this education has now been assigned to the ADR program administrators, trial judges can continue to look for opportunities to help the parties in each case select an appropriate dispute resolution method from among those available under the court's auspices. Judges can ex-

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2001 Traffic Adjudication Workshop

On June 7-8 in San Diego, the Administrative Office of the Courts (AOC) will host a two-day statewide Traffic Adjudication Workshop. The purpose of the workshop is to promote traffic safety through an exchange of information among those in the judiciary who adjudicate the majority of traffic cases, representatives from law enforcement, and other interested parties. The workshop will promote relationships within the traffic community and connect divergent courts by sharing new information and promoting more uniformity in traffic adjudication.

The 1999 Traffic Adjudication Workshop included presentations that detailed legislative changes to DUI laws that were to take effect in July 1999, explained the reasoning behind graduated licensing for juvenile drivers, and showcased the movement toward judicial outreach to the community. This year's workshop will address such topics as Commercial Vehicle Code and hazardous materials enforcement, drug recognition evaluation, DUIs, and mandatory insurance. It will also enable the participants to identify areas of concern in the adjudication and processing of traffic cases and to develop and propose solutions in the form of rules of court, legislation, and community outreach.

● For more information, contact John Burke, 415-865-7613, e-mail: john.burke@jud.ca.gov.